

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 861 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KUMAR RUGHAVIRSINJI

HIMATSINGHJI

Versus

HEIRS OF REJSINH

Appearance:

No one has appeared on behalf of the appellant

MR RN SHAH for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/08/2000

ORAL JUDGEMENT

This First Appeal by the original Plaintiff was filed on 7.12.81 against the judgment and decree dated 31.8.81 passed by Civil Judge (S.D.), Himatnagar in Special Civil Suit No.3 of 1977. The impugned judgment shows that compromise Exh.110 was produced by the

defendants before the trial court alongwith Application Exh.61. It also appears from Para 4 of the application that the plaintiff and defendants Nos.2 to 4 had signed the said compromise, the writing of the said compromise was prepared in 2 copies with the aid of carbon papers, original thereof was kept with the plaintiff and the carbon copy bearing signatures of the parties as well as the interveners as witnesses was kept with the defendants Nos.1 to 5. An Application was moved under Order 23 Rule (3) by the defendants with the prayer that the said compromise dated 30.4.79 be recorded and a decree in the said terms be passed. The order below this Application Exh.61 was passed by the trial court on 31.8.81 whereby Application Exh.61 was allowed, the compromise Exh.110 was ordered to be recorded and it was further ordered that the decree in terms of the said compromise shall be drawn up. Against the judgment and decree dated 31.8.81, as aforesaid, the present Appeal was filed in this Court on 7.12.81. The Appeal was admitted on 14.7.82. The order sheet dt.31.3.94 shows that the appellant did not supply the pleadings and, therefore, the matter was posted on 11.4.94. The order sheet dated 11.4.94 shows that the learned counsel for the respondents Mr.Shah was fair enough to state that the appellant's advocate was no more in profession and there upon notice was directed to be issued to the appellant. The order sheet dated 21.6.94 shows that on that day a statement was made by one Shri K.G.Sheth that Ms.K.P.Kansara has to file her appearance for the appellant in the present Appeal. The order sheet dated 4.8.2000 shows that the time was sought on that day on the ground that Mr.Modi was out of station. On 11.8.2000 Mr.R.N.Shah, learned counsel for the respondents, pointed out that the name of the appellant's counsel had been wrongly shown in the Board and that the record shows that the learned counsel for the appellant is Ms.V.S.Modi instead of Mr.Vipul S.Modi. The matter was therefore adjourned for today i.e. 18.8.2000 with the direction that the name of Ms.V.S.Modi be shown in the board and accordingly name of Ms.V.S.Modi has been shown in the board today, yet no one has appeared. The power of no other advocate has been filed in this case. It further appears that in view of the order sheet dated 11.4.94 that the appellant's lawyer (namely Ms.V.S.Modi) was no more in profession a notice was also sent to the appellant at his new address i.e. Plot No.516/1,Kolvada Nagar Society, Gandhinagar to the effect that whereas his lawyer Ms.V.S.Modi was no more in profession, if he wants to engage any other lawyer for the purpose of this Appeal or wants to appear himself, he may take steps accordingly. Despite the service of this notice dated 11.4.94, as is clear from the affidavit of

service dated 21.6.94 as filed by one Shri Ajitsinh H.Rathod, which is found in the Farad, no steps have been taken by the appellant till this date.

This Appeal has remained pending in this court for a period of nearly 18 years by now and it appears that the appellant is no more interested to prosecute this Appeal and may be that he has lost interest in the matter.

This Court finds that there is no reason for which this Appeal should be allowed to pend any more. This Appeal is dismissed for default and non prosecution with no order as to costs.

Mr.R.N.Shah has pointed out that on 14.7.82 a stay order had also been granted in a separate Civil Application No.2304/82 in this Appeal. Since the Appeal itself has been dismissed, in case any such Civil Application is still pending, the same shall be treated as dismissed and ad interim order or interim order, if any, also comes to an end against the execution of the decree.

If at all any other Civil Application or Misc. Civil Application is pending in this Appeal the same should also be treated as disposed of.

Record and proceedings of the trial court be sent back forthwith.

(M.R.Callan,J)